

**FOLEY, LARDNER, HOLLABAUGH & JACOBS** (N)

1775 PENNSYLVANIA AVENUE, N.W.

**WASHINGTON, D. C. 20006**

TELEPHONE (202) 862-5300

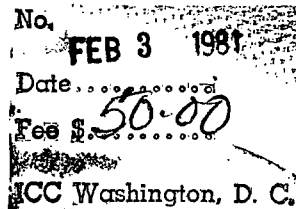
JOHN W. BYRNES  
MARCUS A. HOLLABAUGH  
EPHRAIM JACOBS  
PETER B. EDELMAN  
DOUGLAS V. RIGLER  
JOHN F. GRAYBEAL  
JACK L. LAHR  
HOWARD W. FOGT, JR.  
LINDA HELLER KAMM  
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CATHERINE B. KLARFELD  
PAUL E. COONEY  
DENNIS A. HENIGAN  
JANE A. GOLDEN  
THOMAS A. STROUP  
CAROL S. LOTTMAN

12849

RECORDATION NO. \_\_\_\_\_ Filed 1425

FFB 3 1981 -1) 25 AM

INTERSTATE COMMERCE COMMISSION



February 2, 1981

IN MILWAUKEE, WISCONSIN  
**FOLEY & LARDNER**  
FIRST WISCONSIN CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WIS. 53202

TELEPHONE (414) 271-2400  
TELEX 26-819  
(FOLEY LARD MIL)

IN MADISON, WISCONSIN  
**FOLEY & LARDNER**  
POST OFFICE BOX 1497  
FIRST WISCONSIN PLAZA  
1 SOUTH PINCKNEY STREET  
MADISON, WIS. 53701  
TELEPHONE (608) 257-5035

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder are the original and two counterparts of a Selective Business Security Agreement ("the Agreement"), dated January 2, 1981.

The names and addresses of the parties to the Agreement are as follows:

Secured Party: First Wisconsin National Bank  
of Milwaukee  
First Wisconsin Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Debtor: Wisconsin & Southern Railroad Co.  
501 E. Lake Street  
Horicon, Wisconsin 53032

Included in the property covered by the Agreement are the railroad cars, locomotives and other rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by the Wisconsin & Southern Railroad Co. at the date of the Agreement or thereafter acquired by it or its successors as owners of railway covered by the Agreement.

Secretary  
February 2, 1981  
Page Two

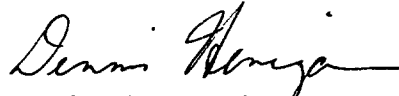
The original Agreement should be returned to:

Howard Hopwood, Esq.  
Legal Department  
First Wisconsin National Bank  
of Milwaukee  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Enclosed is a check in the amount of \$50.00 in payment of the required recordation fee.

The undersigned is an attorney for the First Wisconsin National Bank of Milwaukee and has knowledge of the matters set forth in the Agreement.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dennis A. Henigan".

Dennis A. Henigan

DAH:dm  
Enclosure

**Interstate Commerce Commission**  
Washington, D.C. 20423

2/2/81

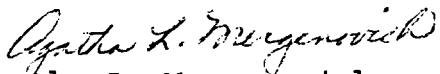
**OFFICE OF THE SECRETARY**

Howard Hopwood, Esq.  
Legal Department  
First Wisconsin Natl. Bank Of Milwaukee  
777 East Wisconsin Avenue  
Milwaukee, WI 53202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/3/81 at 10:25am, and assigned recordation number(s). 12849

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

## 6. RIGHTS OF BANK

(a) **AUTHORITY TO PERFORM FOR DEBTOR.** Upon the occurrence of an event of default or if Debtor fails to perform any of Debtor's duties set forth in this Agreement or in any evidence of or document relating to the Obligations, Bank is authorized, in Debtor's name or otherwise, to take any such action including without limitation signing Debtor's name or paying any amount so required, and the cost shall be one of the Obligations secured by this Agreement and shall be payable by Debtor upon demand with interest from the date of payment by Bank at the highest rate stated in any evidence of any Obligation but not in excess of the maximum rate permitted by law.

(b) **CHARGING DEBTOR'S CREDIT BALANCE.** Debtor grants Bank, as further security for the Obligations, a security interest and lien in any credit balance and other money now or hereafter owed Debtor by Bank or any assignee of Bank and, in addition, agrees that Bank may, at any time after the occurrence of any event of default, without prior notice or demand, setoff against any such credit balance or other money any amount owing upon the Obligations.

(c) **POWER OF ATTORNEY.** Debtor irrevocably appoints any officer of Bank as Debtor's attorney, with power to receive, open and dispose of all mail addressed to Debtor; to notify the Post Office authorities to change the address for delivery of all mail addressed to Debtor to such address as Bank may designate; and to endorse the name of Debtor upon any instruments which may come into Bank's possession. Debtor agrees that Obligations may be created by drafts drawn on Bank by shippers of inventory named in section 10. Debtor authorizes Bank to honor any such draft when accompanied by invoices aggregating the amount of the draft and describing inventory to be shipped to Debtor. Debtor appoints any employee of Bank as Debtor's attorney, with full power to sign Debtor's name on any instrument evidencing an Obligation, or any renewals or extensions, for the amount of such drafts honored by Bank and such instruments may be payable at fixed times or on demand, and shall bear interest at the rate from time to time fixed by Bank. Debtor agrees, upon request of Bank, to execute any such instruments. This power of attorney may be revoked by Debtor only by written notice to Bank and no such revocation shall affect any instruments executed prior to the receipt by Bank of such notice. All acts of such attorney are ratified and approved and he is not liable for any act or omission or for any error of judgment or mistake of fact or law.

(d) **NON-LIABILITY OF BANK.** Bank has no duty to determine the validity of any invoice, the authority of any shipper named in section 10 to ship goods to Debtor or compliance with any order of Debtor. Bank has no duty to protect, insure, collect or realize upon the Collateral or preserve rights in it against prior parties. Debtor releases Bank from any liability for any act or omission relating to the Obligations, the Collateral or this Agreement, except Bank's wilful misconduct.

## 7. DEFAULT

Upon the occurrence of one or more of the following events of default,

**Nonperformance.** Debtor fails to pay when due any of the Obligations or to perform, or rectify breach of, any warranty or other undertaking by Debtor in this Agreement or in any evidence of or document relating to the Obligations;

**Inability to Perform.** Debtor or a surety for any of the Obligations dies, ceases to exist, becomes insolvent or the subject of bankruptcy or insolvency proceedings;

**Misrepresentation.** Any representation made to induce Bank to extend credit to Debtor, under this Agreement or otherwise, is false in any material respect when made; or

**Insecurity.** Any other event which causes Bank in good faith to deem itself insecure;

all of the Obligations shall, at the option of Bank and without any notice or demand, become immediately payable; and Bank shall have all rights and remedies for default provided by the Wisconsin Uniform Commercial Code, as well as any other applicable law and any evidence of or document relating to the Obligations. With respect to such rights and remedies,

(a) **REPOSSESSION.** Bank may take possession of Collateral without notice or hearing, which Debtor waives.

(b) **ASSEMBLING COLLATERAL.** Bank may require Debtor to assemble the Collateral and to make it available to Bank at any convenient place designated by Bank.

(c) **NOTICE OF DISPOSITION.** Written notice, when required by law, sent to any address of Debtor in this Agreement at least 10 calendar days (counting the day of sending) before the date of a proposed disposition of the Collateral is reasonable notice.

(d) **EXPENSES AND APPLICATION OF PROCEEDS.** Debtor shall reimburse Bank for any expense incurred by Bank in protecting or enforcing its rights under this Agreement including, without limitation, reasonable attorneys' fees and legal expenses and all expenses of taking possession, holding, preparing for disposition and disposing of the Collateral. After deduction of such expenses, Bank may apply the proceeds of disposition to the Obligations in such order and amounts as it elects.

(e) **WAIVER.** Bank may permit Debtor to remedy any default without waiving the default so remedied, and Bank may waive any default without waiving any other subsequent or prior default by Debtor.

## 8. PERSONS BOUND

The obligations hereunder of all Debtors are joint and several. This Agreement benefits Bank, its successors and assigns, and binds Debtor(s) and their respective heirs, personal representatives, successors and assigns.

## 9. INTERPRETATION

The validity, construction and enforcement of this Agreement are governed by the internal laws of Wisconsin. All terms not otherwise defined have the meanings assigned to them by the Wisconsin Uniform Commercial Code. Invalidity of any provision of this Agreement shall not affect the validity of any other provision.

## 10. SHIPPERS

Shippers authorized to draw drafts on Bank are:

## 11. OTHER PROVISIONS

Signed and Sealed on JANUARY 2, 1981

WISCONSIN & SOUTHERN RAILROAD CO.

*James T. Hurst*  
DEBTOR

(SEAL)

\* DEWIS T. HURST - VICE PRESIDENT

DEBTOR

(SEAL)

Address: 501 E. Lake Street  
SEE SECTION 3(j)

Horicon, Wisconsin

County: Dodge

\*Type or print name signed above.

SELECTIVE BUSINESS SECURITY AGREEMENT

1. SECURITY INTEREST

The undersigned ("Debtor", whether one or more) grants to First Wisconsin National Bank of Milwaukee a security interest in the property, wherever located, checked in Section 2 ("Collateral") to secure all debts, obligations and liabilities of any Debtor to Bank arising out of credit previously granted, credit contemporaneously granted and credit granted in the future by Bank to any Debtor, to any Debtor and another, or to another guaranteed or indorsed by any Debtor ("Obligations").

2. DESCRIPTION OF COLLATERAL

One or more boxes must be checked.

- (a) ☒ **Scheduled Collateral.** If checked here, Debtor's inventory, accounts, contract rights, equipment, general intangibles, instruments, documents of title and chattel paper described in the attached schedule and any additional schedules delivered by Debtor to Bank from time to time;
- (b) ☒ **Specific Collateral.** If checked here, the following described accounts, contract rights, chattel paper, equipment, general intangibles, instruments, documents of title and inventory now owned or hereafter acquired by Debtor:

Debtor's interest in the Operating Agreement for Rail Service Continuation by and between the East Wisconsin Counties Railroad Consortium and the Debtor, dated April 29, 1980.

- (c) ☒ **All Inventory.** If checked here, all inventory and documents relating to inventory now owned or hereafter acquired by Debtor, including all goods held for sale, lease or demonstration or to be furnished under contracts of service, goods leased to others, trade-ins and repossessions, raw materials, work in process and materials or supplies used or consumed in Debtor's business;
- (d) ☒ **All Receivables.** If checked here, all accounts, contract rights, chattel paper and instruments now owned or hereafter acquired by Debtor;
- (e) ☒ **All Equipment.** If checked here, all equipment and fixtures now owned or hereafter acquired by Debtor;
- (f) ☒ **All General Intangibles.** If checked here, all general intangibles now owned or hereafter acquired by Debtor;

and all additions and accessions to, all spare and repair parts, special tools, equipment and replacements for, all returned or repossessed goods the sale or lease of which gave rise to, and all proceeds and products of the foregoing.

3. DEBTOR'S WARRANTIES

Debtor warrants that while any of the Obligations are unpaid:

(a) **OWNERSHIP.** Debtor is the owner of the Collateral free of all encumbrances and security interests (except Bank's security interest), and chattel paper constituting Collateral evidences a perfected security interest in the goods covered by it, free from all other encumbrances and security interests, and no financing statement (other than Bank's) is on file covering the Collateral or any of it. If Inventory is represented or covered by documents of title, Debtor is the owner of the documents, free of all encumbrances and security interests other than Bank's security interest.

(b) **SALE OF GOODS OR SERVICES RENDERED.** Each account and chattel paper constituting Collateral as of this date arose from the performance of services by Debtor or from a bona fide sale or lease of goods, which have been delivered or shipped to the account debtor and for which Debtor has genuine invoices, shipping documents or receipts.

(c) **ENFORCEABILITY.** Each account, contract right and chattel paper constituting Collateral as of this date is genuine and enforceable against the account debtor according to its terms. It and the transaction out of which it arose comply with all applicable laws and regulations. The amount represented by Debtor to Bank as owing by each account debtor is the amount actually owing and is not subject to setoff, credit, allowance or adjustment, except discount for prompt payment, nor has any account debtor returned the goods or disputed his liability.

(d) **DUE DATE.** No payment on any account or chattel paper constituting Collateral described in section 2(a) or (b) is as of this date more than \_\_\_\_\_ days overdue, there has been no default according to the terms of any such Collateral and no step has been taken to foreclose the security interest it evidences or otherwise enforce its payment.

(e) **FINANCIAL CONDITION OF ACCOUNT DEBTOR.** As of this date Debtor has no notice or knowledge of anything which might impair the credit standing of any account debtor and Debtor will advise Bank upon receipt of any such notice or knowledge affecting Collateral referred to in section 2(a) or (b).

(f) **VALID INCORPORATION.** If a corporation, Debtor is duly organized, validly existing and in good standing under the laws of the state of incorporation and if a foreign corporation is licensed to do business in Wisconsin.

(g) **OTHER AGREEMENTS.** Debtor is not in default under any agreement for the payment of money.

(h) **AUTHORITY TO CONTRACT.** The execution and delivery of this Agreement and any instruments evidencing Obligations will not violate or constitute a breach of Debtor's Articles of Incorporation, By-Laws or any agreement or restriction to which Debtor is a party or is subject.

(i) **ACCURACY OF INFORMATION.** All information, certificates or statements given to Bank pursuant to this Agreement shall be true and complete when given.

(j) **ADDRESSES.** The address of Debtor's residence, or if a corporation or partnership, the address of Debtor's place of business, or if Debtor has more than one place of business, then the address of the Debtor's chief executive office, is shown opposite Debtor's signature. The address where the Collateral will be kept, if different from that appearing opposite Debtor's signature, is \_\_\_\_\_

Such locations shall not be changed without prior written consent of Bank, but the parties intend that the Collateral, wherever located, is covered by this Agreement.

(k) **CHANGE OF NAME OR ADDRESS.** Debtor shall immediately advise Secured Party in writing of any change in name or address.

(l) **FIXTURES.** If any of the Collateral is affixed to real estate, the legal description of the real estate is:

4. SALE AND COLLECTIONS

(a) **SALE OF INVENTORY.** So long as no default exists under any of the Obligations or this Agreement, Debtor may (a) sell inventory in the ordinary course of Debtor's business for cash or on terms approved by Bank, at prices not less than any minimum sale price shown on instruments evidencing Obligations and describing inventory, or (b) with the prior written consent of Bank, lease inventory on terms approved by Bank.

(b) **VERIFICATION AND NOTIFICATION.** Bank may verify Collateral in any manner, and Debtor shall assist Bank in so doing. Upon default Bank may at any time and Debtor shall, upon request of Bank, notify the account debtors to make payment directly to Bank and Bank may enforce collection of, settle, compromise, extend or renew the indebtedness of such account debtors. Until account debtors are so notified, Debtor, as agent of Bank, shall make collections on the Collateral. Bank may at any time notify the bailee of any Collateral of Bank's security interest.

(c) **DEPOSIT WITH BANK.** At any time Bank may require that all proceeds of Collateral received by Debtor shall be held by Debtor upon an express trust for Bank, shall not be commingled with any other funds or property of Debtor and shall be turned over to Bank in precisely the form received (but endorsed by Debtor if necessary for collection) not later than the business day following the day of their receipt. All proceeds of Collateral received by Bank directly or from Debtor shall be applied against the Obligations in such order and at such times as Bank shall determine.

5. DEBTOR'S COVENANTS

Debtor agrees:

(a) **MAINTENANCE OF COLLATERAL.** Debtor shall: maintain the Collateral in good condition and repair and not permit its value to be impaired; keep it free from all liens, encumbrances and security interests (other than Bank's security interest); defend it against all claims and legal proceedings by persons other than Bank; pay and discharge when due all taxes, license fees, levies and other charges upon it; not sell, lease or otherwise dispose of it or permit it to become a fixture or an accession to other goods, except for sales or leases of inventory as provided in this Agreement, not permit it to be used in violation of any applicable law, regulation or policy of insurance; and, as to Collateral consisting of instruments and chattel paper, preserve rights in it against prior parties. Loss of or damage to the Collateral shall not release Debtor from any of the Obligations.

(b) **INSURANCE.** Debtor shall keep the Collateral and Bank's interest in it insured under policies with such provisions, for such amounts and by such insurers as shall be satisfactory to Bank from time to time, and shall furnish evidence of such insurance satisfactory to Bank. Debtor assigns (and directs any insurer to pay) to Bank the proceeds of all such insurance and any premium refund, and authorizes Bank to indorse in the name of Debtor any instrument for such proceeds or refunds and, at the option of Bank, to apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to restoration of the Collateral, returning any excess to Debtor. Bank is authorized, in the name of Debtor or otherwise, to make, adjust and/or settle claims under any credit insurance financed by Bank or any insurance on the Collateral, or cancel the same after the occurrence of an event of default.

(c) **MAINTENANCE OF SECURITY INTEREST.** Debtor shall pay all expenses and, upon request, take any action reasonably deemed advisable by Bank to preserve the Collateral or to establish, determine priority of, perfect, continue perfected, terminate and/or enforce Bank's interest in it or rights under this Agreement.

(d) **COLLATERAL RECORDS AND STATEMENTS.** Debtor shall keep accurate and complete records respecting the Collateral in such form as Bank may approve. At such times as Bank may require, Debtor shall furnish to Bank a statement certified by Debtor and in such form and containing such information as may be prescribed by Bank, showing the current status and value of the Collateral.

(e) **INSPECTION OF COLLATERAL.** At reasonable times Bank may examine the Collateral and Debtor's records pertaining to it, wherever located, and make copies of records. Debtor shall assist Bank in so doing.

(f) **SERVICE CHARGE.** In addition to the required payments under the Obligations and this Agreement, Debtor shall pay Bank's then current service charges for servicing and auditing in connection with this Agreement.

(g) **CHattel PAPER.** Chattel paper constituting Collateral shall be on forms approved by Bank. Debtor shall promptly mark all such chattel paper, and all copies, to indicate conspicuously the Bank's interest and, upon request, deliver them to Bank.

(h) **UNITED STATES CONTRACTS.** If any accounts or contract rights constituting Collateral arose out of contracts with the United States or any of its departments, agencies or instrumentalities, Debtor will notify Bank and execute writings required by Bank in order that all money due or to become due under such contracts shall be assigned to Bank and proper notice of the assignment given under the Federal Assignment of Claims Act.

(i) **MODIFICATIONS.** Without the prior written consent of Bank, Debtor shall not alter, modify, extend, renew or cancel any Collateral.

(j) **RETURNS AND REPOSSESSIONS.** Debtor shall promptly notify Bank of the return or repossession by Debtor of goods underlying any Collateral and Debtor shall hold and dispose of them only as Bank directs.

SCHEDULE A

Quantity

Description

1

VF 3ZL Snowcutter with  
Telescopic Chute & Rail  
Type Guide Shoes Serial  
Number 251

1

Heab Model 550 Crane  
including accessories;  
Serial Number 50218

1

1981 GMC Hi-Rail pick-up  
truck, Model #TC 30943  
with 164" wheel base,  
9,000 ton GVW complete  
with rail gear and  
accessories.

1

901-430-WDS Welder with  
attachments.

STATE OF )  
 ) SS.  
COUNTY OF )

On this and day of January, 1981, before me personally appeared Albert T. Chase, to me personally known, who being by me duly sworn, says that he is the Vice President of Wisconsin & Southern Railroad Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Carmen Montagano  
NOTARY PUBLIC

My Commission expires ~~My Commission Expires~~ October 20, 1984.